

Excerpts from Letter to Bonnie Percy; unanswered as of April 28, 2008

South Lake Rd.
Middlesex, NY 14507
March 17, 2008

Bonnie L. Percy
Yates County Treasurer
417 Liberty Street
Suite 1081
Penn Yan, NY 14527-1122

Dear Ms. Percy,

I am in receipt of your letter of December 3rd, 2007 regarding the new Yates County Occupancy Tax. Up until that letter, I never received any notice at all that Yates County was even contemplating such a tax, and I think it is very unfair and unreasonable to give us so little notice, as I have spent a good part of the last few months trying to figure out if I am even subject to this tax, and there are many answers, but no one seems sure. Part of the reason is the very confusing language in all the information I've received. I did receive and return your little card but it also didn't cover my situation. Then you sent some kind of a registration form and that really confused me. I have been reading the summary of the law you sent as well. Each step only leads to more and more questions. I asked my neighbors who are in similar situations and they are confused too.

Anyway, I heard you have a date coming up when all this has to be filed, so to the extent I may be subject to this law, please consider this letter to be a registration, but to the extent I am not subject to this law, then please do not consider this letter to be a registration. I thought I would just set forth the facts, perhaps more than you actually need, but it seems like it should help your determination, and I don't want to be accused of not giving you the information you may require. Also, since there is apparently a big fine and even jail time for doing something wrong please answer my questions in writing, as answering them verbally will not give me the protection I need. Thank you.

Your Letter: I got confused from the get-go. First you said that the collection of the tax is the responsibility of the Yates County Treasurer, but now it seems like you want me to collect it. I would prefer that you do it. Your letter also said that "we have obtained from the Yates County Real Property Tax Office a list of other than Seasonal Residences in the waterfront areas of Canandaigua, Seneca and Keuka Lake and your property falls in this classification." Now I really don't understand what you mean by "Seasonal Residences," let alone what you mean by "other than Seasonal Residences." I am trying to figure this out. If I rent when it is other than a season, I am on your list? I mean, it is always a season: summer, fall, winter, spring, and you didn't mention which season the tax is going to refer to. Also since every rental is in a season, how can any house be rented "other than seasonally?" And why, if you please, does it matter what is in what season?

Does the occupancy tax law only apply in certain seasons? Would you please tell me what your definition is of “other than Seasonal Residence” and also what the definition of “vacation rental” is? Thank you. That would be very helpful.

How would I know if it was a vacation rental or not? I mean I have had people come for a family reunion, for a wedding, and one man was recuperating from surgery. He had cancer and was in pretty bad shape. I don't like to poke into other people's business so I really don't know if they are on vacation or not. Am I going to have to ask? Are they going to have to put in writing why they are renting? Oh, and one more question about vacations? If it is a friend or a family member on vacation and I don't charge them rent, then I assume all this doesn't apply, right?

The little cards: Okay, you sent the little cards, but I didn't recognize the numbers so I just replied that for my property ...[in] Middlesex I sometimes rent... to pay the taxes and the rent often doesn't even cover the property taxes, let alone all the other expenses of the property like repairs, insurance, garbage collection, lawn mowing and gardening. I have some health problems that keep me from doing this kind of work, so I have to pay others to do it. That is expensive because I've found out some of these workers charge extra when they come to do work on a lake house, even when they charge less for the same work in town. That seems so unfair. By the way, it also seems like you are just asking lake people to pay this tax. Is that true? That would be oh so very unfair too.

Another problem with the little cards is it asks “for approximately ____ weeks” and I really don't know. Every year is different. Also, when you ask about weeks are you just asking for when it is rented by the week so I should leave months out? or not? I think that way of asking is very confusing. If you are asking about history then please let me know. I might be able to get some numbers for that if I know exactly what you are looking for.

Registration Form: ... If you don't mind my saying so, that is a very bad form for people like me to figure out because it seems more like it's for business than for homeowners. I'm not in a business, I'm just in a home. Maybe you sent me the wrong form; if so, then send me the right one and I'll see what I can do. But if this is the right form then I have some problems. First there is the matter of a Federal ID#.If you mean Social Security number, well I don't want to give that to you. I keep getting all kinds of notices about not giving my social security number out to anyone, and I don't know what is going to happen to these registration forms, so I don't want to write it on the form. Maybe a driver's license number would be better.....

Well, next is “Business Name.” I could probably think up something snappy but then it might seem like a business. I don't feel renting to be able to pay taxes is a business. I don't think paying a tax on tax is fair. I think those fancy schmantzy hotels are businesses, with desk clerks and maids and janitors and oriental rugs. Isn't this tax really only supposed to be on hotels and motels? How did I get on that list? I am definitely not a hotel or a motel. The line for mailing address is no problem; it is shown above. Except in the winter or when I go away, and then I'd have a different address. Will I have to

notify you when it changes? I don't have any partners or principals, but of course I do have principles.

Now about that rental agent stuff. I have sometimes had real estate people make "referrals" and I will pay them a little commission. Is that taxable too? I don't want to use a rental agent and lose money, so you can see the problem. If one of them sends me a rental sometimes, which box should I check? And of course different ones would have different names, but I don't think I should list anybody just yet because I don't want them to feel they've got the business. And I don't think I should list everybody who is a possible rental agent either; wouldn't you agree? It's a good idea to be willing to work with anybody. So I don't know if I worked with one if they would submit a tax or not. I haven't asked anyone and it might be different for different people, and some might be out of state so I don't know how that would complicate things.

On question #6, I guess you could say it is a cottage, but I'd feel better if you'd give me the exact definition of a cottage before I said so, but it is closer to that than to hotel or motel or condominium for sure. It is a house though, too. Where does the definition change between house and cottage? Sometimes I have called it an "apartment" and sometimes a "unit." Will it matter what I call it? I am also wondering if people bring their campers and some stay in the camper, then I guess that doesn't count?

You would think "number of rooms" would be an easy question to answer but it's not. Do bathrooms count? If there's no tub do I count it as a 1/2? If a kitchen and living room are one big room does that count as one room or two rooms? Suppose it has two bedrooms and people don't want to pay as much so I lock off one of the rooms? Then what is the count? Do I have to update the registration statement each time? Now everybody doesn't rent all the rooms each time. Do I need to average over some rentals or not? Does a porch count as a room? How about a change room at the beach? How about garage space if it is rented? If it is not rented? Do hallways and stairs count as rooms? Whenever I get the carpets shampooed they count stairs and a hall as one room. So I can't really answer that question until I know your definition of a room.

Type of ownership seems like a personal question and I wonder why you ask. If the bank holds a mortgage does this change anything? Suppose two people own it together, but are not a partnership or corporation? If it's two people, you can't exactly say "individual." Well if you are asking if I have formed a company to own it, the answer is "no."

Then you ask about the "date started business in Yates County." I don't think this is a business. So should I just leave it blank or use the date ... when I bought it? Question #10 is the easiest. No, I didn't acquire it after January 1, 2008. But question #11 also seems, well, rather nosy to me, if you don't mind my saying so. First, I don't know what you mean by "establishment." That sounds like a business, like a bar and grill. Can I assume you only mean in Yates County? Can I assume you only mean a rental business? Or do you consider my home to be an "establishment." If so, is it only an establishment when it is being rented? If so, then since it isn't being rented at the moment I guess that

would make the answer “no” for that particular situation. If the answer is “no” then there is no place for it to be located it seems.

Well then we get down to the final line. I clearly do not understand what this form is all about, and I have far too many questions to swear it is true and complete. As my husband used to say often, God rest his soul, “Don’t sign anything you don’t understand.” But at least this letter explains my confusion and I hope gives you any information you have a right to ask.

The Law: In trying to figure all this out I read through the two page summary of the law you sent and it only made things more confusing. It clearly says “a 4% tax upon the rent for every occupancy of a room or rooms in a hotel or motel units in the County” and my little cottage/house is clearly not a hotel or motel. I don’t understand how you can just “redefine” me as a hotel or motel, or if you have the right to do that to me. So please tell me where is that right? The definition given of a hotel or motel isn’t the definition in my dictionary either. However, the point may be moot because it says “any facility providing lodging on an overnight basis...” and that is the very point which makes me sincerely believe that this new law doesn’t apply to my situation. I don’t rent on an overnight basis! Never have. I rent for a minimum of one week. ... So I truly believe that since I don’t rent overnight as specified in the summary of the law you sent me, that it doesn’t apply to my property. Hopefully, this point will be enough to close the matter. Also I am not an “operator” of a hotel. My goodness, that is the guy in the blue suit who sits in the back room counting the money while the desk clerk hands out keys. I do have somebody mow the lawn and pull weeds and stuff, and sometimes I have to call somebody to fix something that got broken, but that isn't "operating" is it? I mean I don't fix meals or keep tabs on their comings and goings....they just rent it to help me pay the taxes, which are very expensive. Also, you should note that all my tenants provide their own sheets, pillowcases, towels etc. so they partly provide their “own shelter or lodging” like the campgrounds do, don’t you think?

Now here is something I am really confused about. Even if I had to pay (but I think you will agree that I don’t) I don’t see how I could pay until after the people have rented and stayed. Suppose I had to return part of the rent to them because of a problem? Or suppose they decide to stay longer and it goes to a month, when I believe no one owes an occupancy tax. In other words, the circumstances wouldn’t be known until after they had come and departed, so I assume the money wouldn’t be due until the next due date after the rental, and isn’t due on security deposits, especially if they have cancellation rights, is that correct? If it turned out that I did owe, then I wouldn’t owe anything until September 20, so my thought would be, if I really really had to register, to get the certificate just before the first renter comes (probably around the Fourth of July if I get a rental) and return the certificate to you after Labor Day, so I’d only have one quarterly report to do. I am very concerned about the quarterly reports and having to hire an accountant on top of all these other expenses, and I’d rather not pay him to file four reports. So, if you think I do need to collect the tax, what is the latest I could register to have the certificate for the Fourth of July time frame? Also the fines and imprisonment are very scary, and I want as little to do with having to file reports as possible.

I also have a question about the sign if I need to put one up. I have some nice paneling on the walls and don't want to put holes in the walls. Is this going to be something which can go up with masking tape? I've seen these signs in hotel rooms on the door but the door is glass paned so that won't work.

Here is a good idea for you. My electric bill company asks me to name another person who could get the bill if I were ill or injured. Given how awful these penalties are and how difficult to understand, I think your form should ask or give the chance to designate someone to handle the tax if I were indisposed. How about for senior citizens or people with handicaps? Will you have a service where we could call with our records and you could figure it out for us like the IRS?

Another point of the law which I find very confusing is about records. I sometimes use leases. Do I have to do that all the time? What kind of records do you want? I don't want to find out that months later I didn't keep records right. Another thing that I can't imagine how it would work is that the records be available for inspection and examination at any time upon demand" etc. Suppose I don't hear the doorbell? Will you come in the middle of the night? That would scare me to death. And where should the records be? If I rent my own house out, do I leave them there with the tenants or take them with me? Suppose taking them with me is outside of Yates County, then what? See what I mean about this not even seeming to apply to a little house or cottage? It just doesn't fit. I also noticed that the summary of the law you sent doesn't mention "other than seasonal" so where did that come from? Did someone just decide to apply the law only to some people? Isn't that illegal?

As I understand the occupancy tax law even if I were subject to it, which I don't think I am for the reasons mentioned above, it seems to apply only to rooms. Since I rent beach, dock, moorings, hoist, grounds, parking and a number of other elements, for which I will account separately, I need the definition of room also to understand if the porch and garage can be treated separately, for example.

Now I have something else that I don't understand and that is what you mean by "consideration." Here's the situation: if I stayed with a friend in a unit they sometimes rent, and then they came and stayed in mine, would any occupancy tax be due on that? How about if they bring me a gift or, in one case, parents of a friend stayed for free but left behind a piece of furniture I needed. Is that a consideration? Suppose it was received outside of Yates County, like staying with a friend in Florida in February? Is there a dollar figure that makes something a "consideration"?

In conclusion, I find these forms quite confusing. I just have a little cottage that I sometimes rent out to try to make ends meet with all Yates County's high taxes so I can continue to keep my property. A couple of folks seemed interested this year but when they found out there was a new tax they said they'd rather stay someplace else so except for people who paid already last year, I don't know if I'll have any rentals or not. Basically, I'm still trying to figure that all out, so I need your answers. Part of me is

thinking that maybe it's getting too complicated to rent, but then how will I pay the taxes? It sounds like the paperwork is going to be confusing and it would be easy to make a very costly mistake. Would you please send me a copy of what that paperwork is going to look like? That might help me to decide. I don't want to have to fill it out if I'm not renting, but it also seems like renting for a month might be okay and I wouldn't have to register? Is that right?

Suppose I started doing only monthly rentals so I wouldn't need the sign, and then somebody did want to rent it for a shorter time? Could I rent it and then get the sign? Would I have to say no to them? How fast could an application, registration, issuing a sign be turned around? Maybe I should wait and see if I get any renters first who are willing to pay the tax. What do you think? Are other people doing that too?

Now I am also thinking of maybe avoiding renting the house/cottage and just renting space on the beach for docking boats and people swimming instead. There's no charge for that right? Would it be okay then if I let them use the bathroom as long as they don't stay overnight? Could they put food in the refrigerator if they don't stay overnight? Would I need to lock the bedrooms off?

If I just let friends stay there but they do some gardening for me instead of paying me, or some repairs, would that be okay and I wouldn't have to pay an occupancy tax? That wouldn't be a "consideration" would it?

Please accept this letter as the input I am able to give regarding a possible registration form. But I don't think I want to register until just before the Fourth of July or whenever my first rental is. I don't want to get something started that might not work out for me in the long run. I look forward to your answers so that I will be better able to understand if I am subject to this law. I'll wait until I see your answers before deciding whether I should rent this year or not. I have some friends with questions too, so could I please have a name and phone number of the person who will be answering all these questions? My friends prefer to phone.

Thank you for your help. Again, since I do not rent overnight, and for the other reasons mentioned, I don't believe I am subject to this tax, but I look forward to hearing from you in writing, since the law threatens severe penalties and I cannot afford to receive only verbal input. Thank you very much in anticipation of your reply.

Very truly yours,

[signature]